

1 JOSEPH P. RUSSONIELLO (CABN 44332)  
United States Attorney

2 BRIAN J. STRETCH (CABN 163973)  
3 Chief, Criminal Division

4 WENDY THOMAS (NYBN 4315420)  
5 Special Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055  
7 San Francisco, CA 94102  
Telephone: (415) 436-6809  
Facsimile: (415) 436-7234

8 NOAH ABRAMS  
9 Law Clerk

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) No. CR 07-0295 MAG  
15 Plaintiff, ) UNITED STATES' MOTION IN LIMINE  
16 v. ) TO EXCLUDE REFERENCE TO  
17 NICOLE LEA MAYS, ) SENTENCE OR PUNISHMENT  
18 Defendant. ) Pretrial Conf.: April 1, 2008  
19 ) Time: 2:00 p.m.  
20 ) Court: Hon. Elizabeth D. Laporte

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22 The United States requests that the Court exclude during trial any reference to sentence  
23 or punishment, including any reference to the term of imprisonment that the defendant could  
24 receive if convicted of the crimes charged in the Information.

25 "It has long been the law that it is inappropriate for a jury to consider or be informed of  
26 the consequences of their verdict." *United States v. Frank*, 956 F.2d 872, 879 (9th Cir. 1992).  
27 For this reason, it is the practice in federal courts to instruct juries that they are not to be  
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1 concerned with the consequences to the defendant of the verdict, except where required by  
2 statute. *Rogers v. United States*, 422 U.S. 35, 40 (1975) (jury should have been admonished  
3 that it “had no sentencing function and should reach its verdict without regard to what  
4 sentence might be imposed”); *United States v. Reed*, 726 F.2d 570, 579 (9th Cir. 1984) (trial  
5 judge properly instructed jury that the “punishment provided by law for the offenses charged in  
6 the indictment are matters exclusively within the province of the court. It should never be  
7 considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence  
8 of the accused.”).

9 In this case, the jury has no role in determining the defendant’s punishment. The jury’s  
10 sole function is to consider the evidence to decide whether or not the defendant is guilty of the  
11 crimes charged in the indictment. The jury should base its verdict on the facts presented at trial,  
12 not on speculation about what the defendant deserves or the effect of a given verdict on society.  
13 For these reasons, the government agrees with the Court that it should give Ninth Circuit Model  
14 Instruction Number 7.4, instructing the jury to not consider punishment in deciding whether the  
15 government has proved its case against the defendant beyond a reasonable doubt.

16 Here, the defendant is charged with two counts of possessing a controlled substance  
17 (heroin and marijuana), in violation of 21 U.S.C. § 844(a), which carries a maximum penalty of  
18 1 year imprisonment. Because the defendant faces a prison term should she be convicted of any  
19 of the charged crimes, the integrity of the juror deliberations will be compromised if the defense  
20 makes any reference to punishment in the jury selection process or in front of the jury prior to  
21 their reaching a verdict. That reference could be as overt as the defendant’s liberty is at stake in  
22 this trial. Such comments regarding punishment are inappropriate in light of clear authority that  
23 the jury is not to consider punishment in determining whether the defendant is guilty of the  
24 charged offense.

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For the foregoing reasons, the United States requests that the Court exclude during trial any reference to punishment or sentence.

DATED: March 18, 2008

Respectfully submitted,

**JOSEPH P. RUSSONIELLO**  
United States Attorney

/s/  
WENDY M. THOMAS  
Special Assistant United States Attorney